**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO. 4279 of 2007**

**DATE: 19-07-2007**

Between :

M/s Suryalatha Spinning Mills Ltd.,
Marchala, Kalwakurthy,
Mahobobnagar District.

… Petitioner

And

Regional Director,
Employees State Insurance Corporation,
Hyderabad and 3 others.

… Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO. 4279 of 2007**

**ORDER:**

This writ petition is filed seeking a declaration that the letter dated 29-01-2007 issued by the first respondent-Regional Director, Employees State Insurance Corporation proposing to implement the ESI scheme in the Revenue village of Kalwakurthy is arbitrary and illegal.

Under the impugned letter, the petitioner was informed that the provisions of the ESI Act, 1948 (for short 'the Act') would be implemented in all the areas falling within the limits of Revenue villages of Kalwakurthy with effect from 01-02-2007 and accordingly, the petitioner was called upon to initiate action towards the registration of its unit as well as all the coverable employees in compliance with the provisions of the Act in respect of the petitioner's factory from 01-02-2007. It is stated that on submission of prescribed form in the Regional Office, the petitioner will be allotted an Employee's Code Number and thereafter the employees and their family members will be provided with medical benefits and medical care through the Medical Practitioner specified thereunder. The petitioner was also requested to obtain declaration forms in respect of the individual employees. That apart, the petitioner, being the principal employer, was called upon to remit the contributions in respect of all its employees and also in respect of the employees engaged through immediate employer within 21 days of expiry of the wage period. The petitioner was also required to submit a return of contributions with effect from 01-02-2007.

The petitioner contends that though it was not opposing extension of ESI coverage to its employees in principle, it is objecting

coverage with effect from 01-02-2007 since no medical facilities are established. It is contended that without providing the medical facilities, the first respondent had covered the industry from 01-02-2007 in a hasty manner by merely nominating a private Medical Practitioner to give out-patient treatment, which does not serve the purpose. It is stated that the petitioner unit consists of about 2000 employees and it will be impossible for the Doctor to attend to the requirements of the said employees. It is also stated that the employees and their family members are required to go to ESI hospital at Sanatnagar or Nacharam, which are 70 kms., from the petitioner's factory for in-patient treatment. Thus, it is contended that the medical facilities proposed to be provided under the scheme will not adequate and will not serve the purpose._

A counter affidavit has been filed on behalf of the Corporation stating that the allegation that no proper medical facilities are provided is in correct and in fact the first respondent has got surveyed the factories/establishments situated in Kalwakurthy area through one of the area Inspectors and identified sufficient number of employees found working in the area for implementation of the ESI scheme.

A separate counter affidavit has been filed on behalf of the third respondent on the same lines denying the allegation that the ESI scheme has been implemented without arranging medical facilities. It is further stated that to start ESI dispensary, 3000 patients are required and for the purpose of below 3000 patients one panel Doctor will be arranged for medical treatment.

I have heard the learned counsel for both the parties and perused the material on record.

The contentions raised by the petitioner opposing the impugned proposal for implementation of ESI scheme in the petitioner's establishment involved several disputed questions of fact which cannot be enquired into and decided by this Court in a writ proceeding. That apart, the law is well settled that when the employer denies the liability or applicability of the provisions of the Act or the quantum of the contribution to be deposited by the employer, it is for

him to approach the Insurance Court and seek declaration (Vide ***Employee's State Insurance Corporation v. F.Fibre Banglore(Private) Limited, 1997 SCC (L&S) 190***)

Following the above decision of the Supreme Court, a Division Bench of this Court in ***Ashok Leyland Ltd, Ductron, Castings Ltd., v. Dy.Tahsildar/Special. Revenue Inspector(ESI)***[1] held that all questions including the question of applicability of the Act can be raised before the Employees Insurance Court.

Even assuming that the petitioner is aggrieved on any ground whatsoever, he ought to have evolved the remedy available under the Act.

Accordingly, without expressing any opinion, the writ petition is disposed of granting leave and liberty to the petitioner to work out the statutory remedy. No costs.

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G. ROHINI, J

Date: 19-07-2007
KLP

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[1] 2001(4)ALD 96 (DB)